

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|--|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Diana Murray | Team: Team # 2 | CCRB Case #: 201306464 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 06/19/2013 6:45 PM | Location of Incident: West 179th Street and University Avenue | Precinct: 46 | 18 Mo. SOL 12/19/2014 | EO SOL 12/19/2014 | |
| Date/Time CV Reported Tue, 07/09/2013 12:00 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 07/18/2013 12:33 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Anthony Donato | 07509 | 948904 | 046 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|----------------------|-----------|--------|----------|
| 1. POM Andrew Storer | 06760 | 949698 | 046 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|--|-----------------------------|
| A.POM Anthony Donato | Abuse: PO Anthony Donato searched § 87(2)(b) [REDACTED] | [REDACTED] |
| B.POM Anthony Donato | Abuse: PO Anthony Donato frisked § 87(2)(b) [REDACTED] | [REDACTED] |
| C.POM Anthony Donato | Abuse: PO Anthony Donato searched the car in which § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were occupants. | [REDACTED] |

Case Summary

On July 9, 2013, § 87(2)(b) filed this complaint with the Internal Affairs Bureau (IAB) via phone, generating IAB log 2013-29910 (Enc. 9a – 9c). This case was received at the CCRB on July 18, 2013 (Enc. 10a – 10b). A portion of this complaint is being investigated by IAB due to allegations of sexual touching. On June 19, 2013, at approximately 6:45 p.m., § 87(2)(b) and his friend, § 87(2)(b) were driving in the vicinity of West 179th Street and University Avenue, in the Bronx, when they were stopped by officers. The following allegations resulted:

- **Allegation A – Abuse of Authority – PO Anthony Donato searched** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation B – Abuse of Authority – PO Anthony Donato frisked** § 87(2)(b)
- **Allegation C – Abuse of Authority – PO Anthony Donato searched the car in which** § 87(2)(b)
§ 87(2)(b) **and** § 87(2)(b) **were occupants.**

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

On August 2, 2013, § 87(2)(b) rejected mediation. This case was originally assigned to Investigator Jesse Maneiro, and on January 4, 2014, this case was reassigned to Investigator Diana Murray upon Investigator Maneiro's departure from the agency.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of this incident. He is a 5'11" tall, 150-pound Hispanic man with brown hair and brown eyes.

CCRB Statement

On July 31, 2013, § 87(2)(b) provided a phone statement to the CCRB (Enc. 11), and on August 30, 2013, § 87(2)(b) was interviewed at the CCRB (Enc. 12a – 12g). § 87(2)(g)

On June 19, 2013, at 6:45 p.m., § 87(2)(b) was driving his vehicle, a 2005 black Honda Accord, with § 87(2)(b) riding in the passenger seat. The vehicle's windows were rolled down. While nearing the intersection of West 179th Street and University Avenue, in the Bronx, a marked van activated its turret lights and affected the stop of § 87(2)(b)'s vehicle. § 87(2)(b) denied that either he or § 87(2)(b) were making any movements directly prior to being pulled over; however, he then mentioned that he had been moving around while looking for cigarettes in his immediate sitting area.

PO Anthony Donato, who was identified by § 87(2)(b) via his last name, was described as a 6'3" tall, 240-pound uniformed white man. PO Donato approached the passenger's side of the vehicle, while PO Andrew Storer, who was identified via investigation and described as a 6'0" tall, 200-pound uniformed Indian or Hispanic man, approached the driver's side of the vehicle.

PO Donato informed § 87(2)(b) that he had seen him “looking for something” and requested his license. § 87(2)(b) refused to provide his information because he was not driving the vehicle, but also because he did not have his identification in his possession. § 87(2)(b) provided his information verbally. He initially informed PO Donato that he lived in Queens, and upon being asked another question related to his address, § 87(2)(b) indicated that he was born in Philadelphia and raised in Harlem.

PO Donato asked § 87(2)(b) whether he was high, and requested that he exit the vehicle. § 87(2)(b) acknowledged having red eyes at the time of this incident and explained that it was from excessive cell phone use). § 87(2)(b) did not immediately exit and instead asked PO Storer if it was acceptable that PO Donato was asking him to exit the vehicle. PO Donato asked § 87(2)(b) if he was refusing to exit the vehicle, and subsequently opened his door, unbuckled his seatbelt, and placed his hands on § 87(2)(b)'s shoulders in an effort to pull him from the vehicle. At this point, § 87(2)(b) voluntarily exited the vehicle and was guided to the trunk of the vehicle by PO Donato. § 87(2)(b) heard § 87(2)(b) inform PO Storer that § 87(2)(b) and observed him provide PO Storer with a PBA Card, but otherwise did not hear or see their interaction.

On this day § 87(2)(b) was wearing a short sleeved button-down shirt, baggy grey cargo pants, and a New York Yankees baseball hat. As § 87(2)(b) faced the trunk with his hands on the vehicle, PO Donato entered one of § 87(2)(b)'s pants pockets and removed an iPhone, which he set on the trunk of the vehicle. PO Storer left § 87(2)(b)'s window and stood next to PO Donato as he performed the search. An unidentified 5'9" tall, heavyset white male officer with grey hair in his 40s exited the vehicle and also stood next to § 87(2)(b). PO Donato proceeded to run his fingers along the sides of § 87(2)(b)'s socks and frisked the bottom of his legs, rising to his waist. Upon reaching § 87(2)(b)'s genital area, PO Donato cupped his testicles at least two times. § 87(2)(b) was then directed to sit on the bumper of the vehicle.

PO Donato entered the front passenger side of the vehicle while the other two officers stood next to § 87(2)(b). § 87(2)(b) looked back to observe PO Donato searching in the area around the passenger's seat of the vehicle. PO Storer told § 87(2)(b) to look forward. At the time of the vehicle search, § 87(2)(b) remained sitting in the driver's seat of the vehicle.

PO Donato returned to the trunk of the vehicle and instructed § 87(2)(b) to re-enter the vehicle. PO Donato and PO Storer returned to the police van as § 87(2)(b)'s girlfriend, § 87(2)(b) approached the situation and asked § 87(2)(b) “what the fuck” the officers' problem was. PO Donato informed § 87(2)(b) that if she does not watch her mouth, she may get a ticket. Approximately 15 minutes passed before PO Donato returned to the vehicle with a § 87(2)(b) summons for § 87(2)(b). PO Storer issued § 87(2)(b) a summons for § 87(2)(b).

Witness: § 87(2)(b)

- § 87(2)(b) is § 87(2)(b)'s girlfriend.

Phone Statement

§ 87(2)(b) provided a phone statement to the CCRB on September 5, 2013 (Enc. 13a).

At the time of this incident, § 87(2)(b) was informed via telephone by § 87(2)(b) that they had been stopped by the police on the way to pick her up. When she arrived at West 179th Street and University Avenue, in the Bronx, § 87(2)(b) had already re-entered the vehicle and was sitting in the passenger's seat of the vehicle. § 87(2)(b) approached the marked van, which contained three uniformed officers, and spoke to the driver of the van, identified as PO Donato. § 87(2)(b) asked PO Donato questions about why § 87(2)(b) had been stopped, and he told § 87(2)(b) to keep her mouth shut. § 87(2)(b) did not witness PO Donato search or frisk § 87(2)(b) nor did she observe the vehicle being searched.

During the course of the investigation, four phone calls were placed to § 87(2)(b)'s confirmed cell phone number and one letter was mailed to her address in an attempt to obtain a sworn statement from her. § 87(2)(b) has not contacted the CCRB to schedule an appointment.

Attempts to Contact Civilians

§ 87(2)(b)

On September 5, 2013, contact was established with § 87(2)(b) via phone. During this brief conversation, § 87(2)(b) began yelling, declined to answer questions about the incident and disengaged the call with the CCRB investigator. As a result, a statement was not obtained from him.

NYPD Statements:

Subject Officer: PO ANTHONY DONATO

- *PO Donato was § 87(2)(b) old at the time of this incident. He is a 5'11" tall, 250- pound white man with black hair and brown eyes.*
- *On June 19, 2013, PO Donato worked from 3 p.m. to 11:35 p.m. as a 46th Precinct Conditions Officer. He was working in uniform and assigned to marked vehicle #8710.*

Memo Book

On June 19, 2013, at 6:45 p.m., PO Donato was driving southbound on Grand Avenue near the intersection of Burnside Avenue, behind a black two-door vehicle. He noticed that the vehicle was disobeying pavement markings, was parked in the pedestrian cross walk while waiting for the light, and was in the passenger stopping point. The center brake light of the vehicle was non-working. Once the emergency lights were illuminated, the male passenger looked back to the RMP and quickly placed an unknown item beneath his seat. The vehicle came to a slow stop at University Avenue and West 179th Street. PO Donato approached the male passenger, identified as § 87(2)(b) § 87(2)(b) refused to provide his identification and gave an incorrect address two times. He had a hard suspicious bulge in his front left pocket. For the officers' safety, § 87(2)(b) was taken to the rear of his vehicle. He refused the officers commands three times but then complied. He was frisked and stated, "Ya'll have no fucking right to search me." § 87(2)(b) was explained the reason for the frisk. The lungeable – grabbable area of the vehicle was frisked. There was a hard suspicious object in a bag on the floor that felt like a weapon. § 87(2)(b) provided a Queens address and refused to provide his phone number. While waiting to write § 87(2)(b) a summons, he began screaming to passer-byers, "Fuck these niggas, they ain't got better shit to do." At the time, small children were passing by and a female was on the sidewalk. § 87(2)(b) was issued a § 87(2)(b) summons by PO Storer (Enc. 14a – 14d).

Stop, Question and Frisk Report

PO Donato prepared a stop, question and frisk report for § 87(2)(b) (Enc. 15a – 15b). § 87(2)(b) was stopped on the suspicion of a possibly loaded gun. PO Donato listed furtive movements and a suspicious bulge as circumstances that resulted in the stop and frisk. He was not searched. PO Donato noted that additional circumstances considered were the area, which has a high incidence of reported offense, and noted that he received a report from a witness or victim.

Criminal Summons

PO Donato issued a § 87(2)(b) to § 87(2)(b) (Enc. 16a – 16b). He noted that § 87(2)(b) was screaming, "These niggas ain't shit" on a public sidewalk. A woman with children was alarmed.

CCRB Statement

PO Donato was interviewed at the CCRB on December 5, 2013 (Enc. 17a – 17c).

At the time of this incident, PO Donato was driving behind the vehicle in which § 87(2)(b) and § 87(2)(b) occupied, and noted that the vehicle was disobeying the pavement markings, occupying a pedestrian crosswalk, and the brake light was malfunctioning. They initiated the stop of the vehicle at the same time in which PO Donato observed § 87(2)(b) look back at the police van and crouch down. PO Donato believed that § 87(2)(b) was attempting to conceal an object beneath his seat. Due to his vantage point, PO Donato could not see § 87(2)(b)'s hands or the object. PO Donato noted these actions as “furtive movements” on § 87(2)(b)'s stop, question and frisk report.

PO Storer approached the driver, identified as § 87(2)(b) while PO Donato approached § 87(2)(b). § 87(2)(b) refused to provide his identification to PO Donato and subsequently provided two incorrect addresses. Eventually, § 87(2)(b)'s identification was verified via a police computer database. PO Donato asked § 87(2)(b) what object he was trying to conceal. He noticed a suspicious bulge in the left front pocket of § 87(2)(b)'s pants that he believed to be a firearm. During his CCRB interview, PO Donato could not describe the shape or size of the bulge.

PO Donato instructed § 87(2)(b) to exit the vehicle three times, but § 87(2)(b) refused. When § 87(2)(b) eventually complied and exited the vehicle, he stated, “You all have no fucking right to search me.” Initially, PO Donato stated he frisked the left, front pocket of § 87(2)(b)'s pants. However, he later mentioned that he searched the left front pocket of his pants. Further into the interview, PO Donato specified that he did not recall or document searching § 87(2)(b)'s pocket, and he was uncertain how the pocket bulge was ruled out as a weapon. § 87(2)(b) did not verbally identify the object. During the course of the frisk, PO Donato did not enter the lining of § 87(2)(b)'s socks or make physical contact with § 87(2)(b)'s testicles.

Upon viewing the stop, question and frisk report, PO Donato noted that § 87(2)(b) was suspected of “possession of a loaded firearm” in an “area with a high incidence of reported crime” because there are a lot of gunpoint robberies in the area. PO Donato contended that the “report from a victim or witness” was inadvertently selected on the report and did not apply to this incident.

PO Donato entered the vehicle to search the lungeable or grabbable area in the vehicle where § 87(2)(b) had been sitting. He searched near the floor of the vehicle, where he observed § 87(2)(b) crouch toward, and remembered observing an object of interest that he could not recall at the time of his CCRB interview. PO Donato did not recall searching any other area of the vehicle.

§ 87(2)(b) was returned to his vehicle while the officers reentered the police van to issue § 87(2)(b) a summons. No additional officers were present for this incident. As the officers were in the police van, a female, identified as § 87(2)(b) approached the interaction. § 87(2)(b) was screaming, “Fuck these niggas. They do not have better shit to do.” People unrelated to this incident were passing by on the sidewalk as § 87(2)(b) made these statements. § 87(2)(b) did not interfere or address the officers and the officers did not engage her.

When PO Donato handed the summons to § 87(2)(b), § 87(2)(b) told him to “Go fuck himself,” and the officers left the location.

Witness Officer: PO ANDREW STORER

- PO Storer was § 87(2)(b) old at the time of this incident. He is a 5’11” tall, 200-pound Hispanic man with black hair and brown eyes.
- On June 19, 2013, PO Storer worked from 3 p.m. to 11:35 p.m. as a Housing Officer. He was assigned to marked van #8710 and dressed in uniform.

Memo Book

At 6:45 p.m., PO Storer affected a car stop of a 2005 black Honda Civic, Florida Plate § 87(2)(b) near the intersection of Harrison Avenue and Burnside Avenue. § 87(2)(b) was stopped for a defective

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (Enc. 7a).
- § 87(2)(b)

Subject Officer CCRB History

- PO Donato has been a member of the service for three years and there are three substantiated CCRB allegations against him (Enc. 6a – 6b):
 - In CCRB case number 201108564, the Board substantiated a refusal to provide name and shield number, retaliatory summons, and stop allegations against PO Donato and recommended Charges. In December 2012, the NYPD declined to take disciplinary action against PO Donato for the stop and summons allegations, and issued him a Command Discipline B for the refusal to provide his name and shield number.

Conclusion

Allegations Not Pleaded

- § 87(2)(g)
- § 87(2)(g)
- While § 87(2)(b) contended that PO Donato threatened to issue § 87(2)(b) a summons, she did not make this allegation on her own behalf. § 87(2)(g)
- § 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority – PO Anthony Donato searched § 87(2)(b)

§ 87(2)(b) alleged that PO Donato entered § 87(2)(b)'s front pants pocket and removed an iPhone prior to conducting an initial pat down. Though he provided inconsistent statements during his CCRB interview, PO Donato eventually concluded that he frisked § 87(2)(b) but did not search him, which was confirmed by the stop, question and frisk report prepared for this incident. In his memo book, PO Donato noted that § 87(2)(b) shouted, “Ya’ll have no fucking right to search me.”

§ 87(2)(g) PO Donato tended to use the words “frisk” and “search” interchangeably during his CCRB interview; however, when asked directly whether he entered the pocket, he was consistent in denying that he did so. Although PO Donato referenced an amorphous bulge in § 87(2)(b)'s front right pocket, he was unable to recall how he ruled it out as a weapon, and did not recall what the identity of the object was determined to be. § 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority – PO Anthony Donato frisked § 87(2)(b)

It is undisputed that PO Donato frisked § 87(2)(b) after observing § 87(2)(b) make furtive movements toward the floor of the vehicle, which § 87(2)(b) confirmed were actions he performed when searching for his cigarettes. Upon approaching the vehicle, PO Donato noticed a left pocket bulge which he could not describe by shape or size, but which § 87(2)(b) identified as an iPhone. Furthermore, it was undisputed that § 87(2)(b) was not forthcoming in providing his address, as he initially refused to provide his identification and subsequently provided inconsistent boroughs, and that § 87(2)(b) refused to exit the vehicle pursuant to PO Donato's initial requests.

An officer is permitted to frisk an individual when they reasonably believe the person to be dangerous by virtue of being armed, People v. De Bour, 40 N.Y.2d 210 (1976) (Enc. 1a – 1k). The Court has held that furtive movements made by an occupant in a vehicle could endow an officer with reasonable suspicion that the occupant is concealing a weapon, therefore warranting a frisk of the occupant, People v. Crespo, 292 AD2d 177 (1st Dept. – 2002) (Enc. 2b). Through De Bour, the Court has deemed that pocket bulges are innocuous and amorphous bulges are an irrational connection to concealed weaponry¹. While these instances may be innocuous when analyzed separately, the Court has recognized that supplementary suspicious actions can establish a totality of circumstances that would reasonably cause an officer to fear for their safety, and therefore warrant a frisk, People v. Benjamin, 51 N.Y.2d 267 (1980) (Enc. 4a – 4b).

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority – PO Anthony Donato searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

It was undisputed that PO Donato searched the front passenger seat area of § 87(2)(b)'s vehicle. As previously noted, § 87(2)(b)'s movements while searching for his cigarettes were classified as “furtive” by PO Donato, who was not provided with an innocuous explanation for the movements. PO Donato contended that he searched the area to rule out the possibility that § 87(2)(b) had secreted a weapon as he made the downward movements.

A limited search of a vehicle in a specific area of the vehicle is permissible when an officer observes an occupant make furtive movements toward the specific area. The limited search is to be conducted only to rule out the potential of a weapon in the area in which the furtive movements had been observed. Even in the event that the occupant has been removed from the vehicle, the search is permissible to preserve the officers' safety up to the conclusion of the stop. People v. Carvey, 89 N.Y.2d 707 (1997) (Enc. 5a – 5d).

§ 87(2)(g)

¹ People v. Cooper, 17 Misc. 3d 44 (2007) (Enc. 3a – 3e)

§ 87(2)(g)

Team: 2

Investigator: _____ Diana P. Murray _____
Signature Print Date

Supervisor: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date